



**PIP Procedures
Memorandum
98-02
March 23, 1998**

This document constitutes internal staff discussion and general procedures, and does not create any procedural rights of schools. This memorandum contains general guidance to IPOS Case Management Teams and is for internal IPOS use only. This memorandum is not a regulation, and it is not intended to provide guidance binding upon the Department. The requirements that schools must meet are set out in the regulations, and the internal staff procedures in this memorandum neither supplement nor supplant the regulations.

TO : Case Management Division Directors
Area Case Directors
Co-Team Leaders
Director, Administrative Actions and Appeals Division
PIP Staff

THROUGH : Howard E. Fenton, Director
Performance Improvement and Procedures Division

FROM : Patricia Hopson, Chief
Procedures Branch
Performance Improvement and Procedures Division

SUBJECT : Appeal Language in Final Determination Letters

As a result of recent appeal decisions by hearing officials, and based on the advice of counsel, we are issuing new guidance on *appeal language* in Final Program Review Determinations (FPRDs) and Final Audit Determinations (FADs). Hearing officials have determined they are without jurisdiction in cases where an institution appeals a final determination *without liabilities*. As a result, case management teams should adjust FPRD/FAD formats as follows, *effective immediately*:

Key point: *The FPRD or FAD should include appeal language **only** when liabilities are assessed. If no liabilities are assessed, institutional review specialists and audit resolution specialists should omit the standard appeal rights language.* For example, in a campus security FPRD, since liabilities are not an available ED response, but a fine recommendation to AAAD might be, include no appeal rights. As always, if the team refers a case to AAAD, include in the statement of referral to AAAD the standard language that ED will provide institutional appeal rights if AAAD takes any action, but make no reference to any other appeal rights. Although this guidance is in two sections, for FPRDs and FADs, it includes many common points, so PIP requests that all specialists review the entire memo.

For FPRDs. Program reviewers should adjust the standard FPRD language in several places, with changes at the *beginning and end* of the final determination letter. While the appeal language at the *end* of the report should be omitted if no liabilities are assessed, reviewers should also make adjustments at the *beginning* of the FPRD, where the standard language discusses the purposes of the FPRD; one purpose is “to notify the institution of its right to appeal.” Be sure to *omit* this phrase in FPRDs without liabilities. Suggested language is found below.

THREE MODELS FOLLOW AS REVIEWER GUIDANCE -- Standard language for (1) a no-liability FPRD, (2) a no-liability FPRD w/referral to AAAD and (3) a liability FPRD. (Note: In the following samples, we have removed much of the FPRD’s traditional passive voice usage. Instead, using the active voice improves the focus and specificity of report language.)

(1) SAMPLE: NO-LIABILITY FPRD (No appeal language)

Beginning FPRD language:

Thank you for your institution’s responses dated____ and____in response to the (date) program review report. That report covered ____College’s administration of the Title IV, Higher Education Act student financial aid programs during the 19__-__and 19__-__award years.

The _____ Case Management Team has made final determinations for all of the findings in the program review report. The purpose of this Final Program Review Determination (FPRD) is to close the program review.

_____College has taken the corrective actions to resolve all findings. Therefore, the institution may consider these items closed, with no further action required.

Ending language:

Program records relating to the period covered by this program review are subject to the normal record retention requirements outlined in program regulations.

Your cooperation throughout the program review process is appreciated. If you have any questions, please contact Mr/Ms _____ at () ____-____.

Sincerely,

Co-Team Leader

_____ Case Management Team

(2) SAMPLE: NO-LIABILITY FPRD, w/ AAAD REFERRAL

Beginning language:

Thank you for your institution’s responses dated _____ and _____in response to the (date) program review report. That report covered ____College’s administration of the Title IV, Higher Education Act student financial aid programs during the 19__-__and 19__-__award years.

The _____ Case Management Team has made final determinations for all the findings in the program review report. The purpose of this Final Program Review Determination (FPRD) is to close the review. However, please note that, as part of the final determination for finding(s) __, our Case Management Team is referring this FPRD to the Administrative Actions and Appeals Division (AAAD) for its consideration of possible adverse administrative action. Such action may include a fine, or the limitation, suspension or termination of the eligibility of the institution pursuant to 34 CFR, Part 668, Subpart G of the Student Financial Assistance General provisions. If AAAD initiates any action, its notification will include information on institutional appeal rights and procedures on how to file an appeal.

[To program reviewers: Please note the phrase above: “referring this FPRD” to AAAD. Managers in AAAD have asked that the wording in final determinations state that the Case Management Team is referring *this FPRD (or FAD)* to AAAD, in addition to referring *this finding*. By referring the final determination *as a whole*, rather than referring only the finding, AAAD can reserve the broadest range of action options. Note that this initial statement is *in addition* to the AAAD referral language placed *within the relevant finding(s)*--sample below.]

____ College has taken the corrective actions to resolve findings __-__. Therefore, the institution may consider these items closed, with no further action required. We discuss below the consequences of finding(s) __ and __. **[Note to reviewers:** We include below suggested AAAD referral language (two types--fine and general referral) for your use *within the finding*:]

[Option A: General referral:]

As part of the final determination for this finding, the _____ Case Management Team is referring this FPRD to the Department’s Administrative Actions and Appeals Division (AAAD) for consideration of possible administrative action. Such possible action may include limitation, suspension, termination, or fines. If AAAD decides to initiate an action, it will notify the institution and provide information on institutional appeal rights and procedures.

[Option B: Fine referral:]

As part of the final determination for this finding, the _____ Case Management Team has determined that a fine for this violation may be appropriate, and is making a formal fine referral to the Administrative Actions and Appeals Division (AAAD) for its consideration. AAAD will notify the institution of any action it may take as a result of this FPRD, and will include at that time information on institutional appeal rights and procedures.

Ending language:

Record retention requirements that pertain to program records relating to the period of time covered by this program review [**or audit**] appear at 34 C.F.R. 668.24.

Your cooperation throughout the program review process is appreciated. If you have any questions, please contact Mr/Ms _____ at () ____-____.

Sincerely,

Co-Team Leader

_____ Case Management Team

(3) SAMPLE: FPRD with LIABILITIES (Includes appeal language)

Beginning language:

Thank you for your institution's responses dated _____ and _____ in response to the (date) program review report. That report covered _____ College's administration of the Title IV, Higher Education Act student financial aid programs during the 19_ - _ and 19_ - _ award years.

The _____ Case Management Team has made final determinations for all of the findings in the program review report. The purpose of this Final Program Review Determination (FPRD) is to (1) identify the liabilities due from _____ College; (2) provide instructions for the payment of the liabilities to the Department of Education (ED); (3) notify the institution of its right to appeal; and (4) close the program review.

_____ College has taken the corrective actions to resolve findings __, __, __, __, and __. Therefore, the institution may consider these items closed, with no further action required. We discuss below the consequences of the program violations for findings __, __, and __.

[Ending FPRD language follows, and includes payment instructions (with new St. Louis lockbox information), payment plan availability, new language on funds offset for nonpayment, new records retention language, and appeal instructions]:

PAYMENT INSTRUCTIONS

Your institution must pay the \$ _____ liability by forwarding to the following address a check payable to the U.S. Department of Education within 45 days of the date of this letter:

U.S. Department of Education
P.O. Box 952226
St. Louis, MO 63195-2226

To properly identify your institution's payment and to ensure that the institution receives credit for the payment, please include the following information on the check and accompanying documents:

Amount: \$ _____
EIN : _____
PRCN : _____

Your institution must make this payment within forty-five (45) days of the date of this letter. If payment is not received by the Department within that 45 day period, interest will accrue in monthly increments, starting with the date of this letter, until the date of receipt of your payment. If you have any questions regarding interest accruals or payment credits, you may telephone (202) 401-1450 and ask to speak to your institution's account representative.

If within forty-five days of the date of this letter, your institution has neither made payment in accordance with these instructions nor entered into an arrangement to repay the liability under terms satisfactory to the U.S. Department of Education, the Department intends to collect the

amount due and payable by administrative offset against payments due your organization from the Federal Government. **Your institution may object to the collection by offset only by challenging the existence or amount of the debt.** Your institution makes this challenge by timely appealing this determination under the procedures described in the “Appeal Procedures” section of this letter. The Department will use those procedures to consider any objection to offset. No separate appeal opportunity will be provided. If a timely appeal is filed, the Department will defer offset until completion of the appeal, unless the Department determines that offset is necessary as provided in 34 CFR Sec. 30.28. This debt may also be referred to the Department of the Treasury for further action as authorized by the Debt Collection Improvement Act of 1996.

Payment Plan: If full payment to the U.S. Department of Education cannot be made within 45 days of the date of this letter, the institution may contact the Financial Improvement Receivables Group at (202) 401-1450 to apply for a payment plan. Interest charges and other conditions apply. The institution may direct written requests to the following address:

U.S. Department of Education
Financial Improvement Receivables Group
600 Independence Avenue, SW
FOB 10B, Room 3400
Washington, DC 20202-4330

APPEAL PROCEDURES

This letter constitutes the Department’s Final Program Review Determination with respect to the liabilities identified from the **(date)** program review conducted at your institution. If your institution wishes to appeal to the Secretary for a review of monetary liabilities established by this Final Program Review Determination, the institution must file a written request for a hearing. This request must be received by the Department no later than **45 days** from the date the institution receives this final determination. The institution must enclose with its appeal request **an original and four copies of the information submitted**, and must send the appeal request to:

Mr. David Morgan, Director
Administrative Actions and Appeals Division
U.S. Department of Education
P.O. Box 23800
L’Enfant Plaza Station
Washington, DC. 20026

If sent by overnight mail or courier, please deliver to:

Mr. David Morgan, Director
Administrative Actions and Appeals Division
U.S. Department of Education
Room 3923, ROB-3 (GSA/NCR Building)
7th and D Streets, SW
Washington, DC 20407

Your institution's appeal request must: (1) indicate the findings, issues and facts you dispute; (2) state the institution's position, together with pertinent facts and reasons supporting its position; (3) include all documentation it believes the Department should consider in support of the appeal; and (4) include a copy of this final program review determination.

If your institution's appeal request is complete and made on a timely basis, the Department will schedule an administrative hearing in accordance with Section 487(b)(2) of the Higher Education Act of 1965, as amended (HEA), 20 USC 1094(b)(2). The procedures followed with respect to your institution's appeal will be those provided in 34 CFR Part 668, Subpart H.

Program records relating to the period covered by this program review [**or audit**] must be retained until the later of: resolution of the loan(s), claim(s) or expenditure(s) questioned in the program review [**or audit**], 34 C.F.R. 668.24 (e) (3) (i); or the end of the retention period applicable to the record under 34 C.F.R. 668.24 (e) (1) and (e) (2).

Your continued cooperation throughout the program review process is appreciated. If you have any questions, please contact Mr/Ms _____ at () ____-____.

Sincerely,

Co-Team Leader
Case Management Team

Reminder to Program Reviewers: While we believe the FPRD language models above will be helpful, PIP urges reviewers to give close attention to any necessary tailoring of the language related to each individual case.

To Audit Resolution Specialists, please note relevant language changes for FADs:

For FADs. The November 21, 1997 PIP Procedures Memo 97-20, "**Procedures for Resolving a Deficient Audit Report,**" includes sample FAD letters, and indicates at the top of page 30 that appeal language (Paragraphs 4-6) should be included *only if establishing liabilities to be repaid*. **Please review the model letters in Appendix C, PIP 97-20, "FAD Cover Letters, etc." and adjust by adding the new language shown above for appeal procedures, payment plan availability, offset for nonpayment and records retention.** By using electronic versions of the FADs, audit specialists should be able to make needed adjustments with minimal difficulty.

Request to audit resolution specialists from AAAD on the subject of "Closure."

Audit specialists have been alerted in PIP 97-20, page 30, to ensure that the Final Audit Determination is indeed *final*. That is, FADs should not instruct a school to send the audit specialist any additional documentation for the purpose of further reducing the established liability in the FAD. AAAD cautions that processing additional school documentation after FAD issuance amounts to a kind of unfinished business, and can leave a school confused about audit closure status and the precise start date of the 45 day appeal window, and may even result in a need to reissue the FAD and restart the entire 45 day appeal time frame.

It is true that audit resolution specialists face a special challenge and must work under the pressure of rigid time frames for audit completion, and this can complicate the process of audit resolution. Nevertheless, AAAD urges specialists to make every effort to ensure that any documentation requests that would reduce liabilities (such as income tax forms or ATB tests, etc.) are accommodated within the PADL -- the Preliminary Audit Determination Letter, **prior** to FAD issuance. To help address this issue, audit resolution specialists are encouraged to make a prompt preliminary analysis of audit reports soon after initial assignment, and make timely use of the PADL to help gather needed school documentation earlier in the process of audit resolution.

In summary, program reviewers and audit specialists are asked to remember these key points --

- 1) *“Monetary liabilities”*: When including appeal rights in an FPRD/FAD, be sure to use the phrase *monetary liabilities*: “If the institution elects to appeal to the Secretary for a review of the monetary liabilities established by this final program review [or audit] determination, the institution must file a written request for a hearing, etc”. Please be sure to adjust your existing standard format so we **do not** offer the institution the opportunity to appeal “any matter” in this final determination.
- 2) *No change in procedures on liabilities to student loan noteholders*: Please note that these **non-ED** liabilities are considered monetary liabilities, and appeal rights should be provided. Reviewers should continue to *follow our standard practice for non-ED liabilities*; that is, continue current procedure for instructing schools to purchase student loans from the current noteholders, including the requirement to submit to the reviewer copies of the cancelled checks as proof of payment. Note that the program review procedure differs from the audit resolution process, which does not include submitting copies of cancelled checks to the ED specialist, but instead informs the school to have its independent CPA check in the next scheduled audit that the required loan purchases were made.
- 3) *Number of copies*. Instead of requiring that one original and three copies of appeal material be submitted, as has been our practice, note that we now require with the appeal request an original and **four** copies. These copies of appeal material are needed for (1) the case team, (2) OGC, (3) AAAD, and (4) OHA (the original and one copy)
- 4) *Zip codes*. Note that we provide two addresses in FPRDs/FADs for sending appeals to David Morgan, Director of AAAD -- one for regular mail (P.O. box, zip 20026), and one for overnight delivery (our ROB-3 street address). *A zip code note*: AAAD asks that attention be given to the zip code for *overnight delivery* services. AAAD asks that teams use **20407** for overnight delivery to our ROB-3 street address, instead of the standard zip for ED, 20202; the 20407 zip appears to expedite delivery service.
- 5) Please remember to include the OPE ID # on every FAD or FPRD.

Unusual cases: If we find that an institution (1) appeals a *nonmonetary* finding, despite the absence of appeal language, or (2) chooses to appeal several findings, some of them monetary and some not, AAAD will consult with OGC on a case by case basis to determine our best course of action on how to handle that institution's appeal request. Similarly, if a case team becomes aware during the review/audit resolution process that an institution wishes to contest a final determination, even if nonmonetary, the team may wish to consult with AAAD/OGC on the possibility of including appeal language in that specific FPRD/FAD, even though no liabilities are assessed.

Accounts receivable procedures: We have included in the sample language above the new payment instructions for schools provided to IPOS recently by Nancy Hoglund, Director, Financial Improvement and Receivables Group. Note also that, for liabilities above \$100,000, revised FEDWIRE procedures are now in place. See PIP Mailbox Messages #108 (2/17/98) and 113 (2/20/98) for more details on payment procedures.

In closing, we believe these adjustments in language for our FPRDs and FADs will sharpen the focus of our audit and program review process by placing the emphasis where it should be -- on appeal rights for institutions contesting *monetary assessments*. Further, by lowering the number of appeals submitted, these changes should have a beneficial impact on workload in AAAD, OGC, and OHA, and will also assist case teams by reducing the need for audit or program review specialists to spend their valuable time preparing needless appeal assessments for AAAD/OGC in cases which the hearing official may ultimately dismiss.

A final word: As noted earlier, while our standard language models can serve as work-savers, specialists and managers will need to exercise diligence in preparing and reviewing final determinations. If specialists insert the standard language without making necessary adjustments that fit the case context, a work product may result that could be problematic if appealed, and may fail to reflect the hard work the specialist has invested in resolution of that audit or program review. Therefore, we ask that teams keep in mind the following request to specialists and their managers -- to those who write, and to those who proofread and sign these important reports: Please review your reports with care before finalizing and signing.

If you have any questions, please contact John Cantalupo, either by telephone (202/708-8261) or e-mail.

cc: Jeanne Van Vlandren
 Patricia Trubia
 Harold Jenkins
 Russ Wolff
 Sally Wanner
 Steve Finley
 Dawn Scaniffe
 Mary Gust